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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

In the Matter of the Seizure of:

CASE NO. 2:18-cv-06742-RGK (PJW)

Any and all funds held in Republic Bank of Arizona Account(s) xxxx1889, xxxx2592, xxxx1938, xxxx2912, and, xxxx2500.

RELATED CASES

2:18-cv-08420; 2:18-cv-08423;
2:18-cv-08551; 2:18-cv-08555;
2:18-cv-08556; 2:18-cv-08565;
2:18-cv-08566; 2:18-cv-08568;
2:18-cv-08569; 2:18-cv-08570;
2:18-cv-08577; 2:18-cv-08578;
2:18-cv-08579; 2:18-cv-08588;
2:18-cv-08592; 2:18-cv-08723;
2:18-cv-08730; 2:18-cv-08747;
2:18-cv-08748; 2:18-cv-08749;
2:18-cv-08750; 2:18-cv-08753;
2:18-cv-08754; 2:18-cv-08759;
2:18-cv-08760; 2:18-cv-08763;
2:18-cv-08764; 2:19-cv-07032;
2:19-cv-07039; 2:19-cv-07044;
2:19-cv-07048]

MOVANTS' RESPONSE TO THE
UNITED STATES MOTION FOR
RECONSIDERATION OF THE
DENIAL OF JAMES LARKIN'S
APPLICATION FOR PERMISSION
TO FILE UNDER SEAL

1 James Larkin filed an Application for Permission to File Under Seal (the
2 “Application”) (Dkt. 60) on September 20, 2018. The Court denied the Application on
3 October 4, 2019, holding that the government had failed to timely file a declaration
4 establishing the need to seal the documents pursuant to Local Rule 79-5.2.2(b) (Dkt.
5 101).

6 The government moved for reconsideration of the denial on October 16, 2019
7 (the “Motion for Reconsideration”). In its Motion for Reconsideration, the
8 government claimed, based on an order entered in a separate matter in the District of
9 Arizona, that the documents that are the subject of Mr. Larkin’s Application “must be
10 kept under seal for all purposes in both the criminal matter in the District of Arizona
11 and in the related civil proceedings here.” The government also said that Mr. Larkin
12 and the other Movants “take no position on the instant Motion for Reconsideration.”

13 Movants submit this response to make clear that the only request on which they
14 take no position is the government’s request that the documents in question be filed
15 under seal pending the Court’s ruling on Mr. Larkin’s Motion to Access and Use
16 Purportedly Inadvertently Produced Materials (the “Motion to Access”) (Dkt. 69).
17 Movants oppose keeping the documents under seal “for all purposes” in these
18 proceedings. That is the issue presented by the Motion to Access—and that motion is
19 not implicated by the government’s Motion for Reconsideration.

20 Nor does the order entered by the District of Arizona compel this Court to grant
21 the government’s Motion for Reconsideration. At most, the Arizona order establishes
22 that the government had a basis to seek to seal the documents; it plainly does not
23 address whether the government timely complied with this Court’s Local Rule 79-
24 5.2.2(b), what the consequences would be for failing to do so, or whether the
25 government’s Motion for Reconsideration satisfies the requirements of Local Rule 7-
26 18.

Finally, the order entered by the District of Arizona does not require this Court to deny the Motion to Access, as the government seems to suggest. Not only is the Motion to Access not at issue in the Motion for Reconsideration, the Motion to Access raises issues not presented to or ruled on by the District Court in Arizona—notably whether the government breached its obligations of candor to this Court, whether the government can shield its misconduct from scrutiny by asserting the work product doctrine, and whether Movants are entitled to the discovery of the documents under Fed. R. Civ. P. 26(b)(3)(A) despite being work product.

Respectfully submitted,

DATED: October 23, 2019

BIENERT | KATZMAN PC

/s/ Whitney Z. Bernstein
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CERTIFICATE OF SERVICE

I certify that on this 23rd day of October, 2019, I electronically transmitted a PDF version of this document to the Clerk of the Court, using the CM/ECF System, for filing and for transmittal of a Notice of Electronic Filing to the following CM/ECF registrants listed below.

/s/ Toni Thomas
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